IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.368 OF 2006

IN

NOTICE OF MOTION NO.2110 OF 2006

WITH

CIVIL APPLICATION NO.459 OF 2006

Sudhir Babu Solanki & Ors. ...Appellants

Versus

State of Maharashtra & Ors. ...Respondents

.....

Mr.M.P.Vashi i/b M.P.Vashi & Associates for Appellants.

Mr.A.R.Patil, A.G.P. for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

JUNE 7, 2006.

P.C.

1. Heard Counsel for the parties. Perused the relevant documents on record.

2. I find substance in the submission canvassed on behalf of Respondents that no

indulgence be shown in the fact situation of the present case. This is so because the Appellants first approached the Division Bench of this Court by way of Writ Petition (Lodging) No.100 of 2006, which was later on numbered as Writ Petition No.500 of 2006. That Writ Petition was disposed of on 13th February 2006 on recording the assurance given by the Appellants through their Counsel that they would vacate the premises by end of April 2006. That did not happen. Instead, the Appellants/Plaintiffs instituted another Writ Petition being Writ Petition No.1310 of 2006 which was also disposed of on 4th May 2006 giving one month's further time to vacate to the Appellants by way of indulgence. From the order which is passed by the Division Bench, it is obvious that no liberty was prayed or has been granted by the Division Bench to the Appellants/Plaintiffs to institute suit for relief which is overlapping with the relief claimed in the Writ Petition.

3. Viewed in this perspective, no interference is warranted in the present Appeal, as no fault can be found with the opinion recorded by

the Trial Court, for, it is not open to that Court to sit over the order passed by the High Court. That opinion of the Trial Court is appropriate.

4. However, the Appellants, realising their fate, through Counsel submit that some more time be given to the Appellants to enable them to make necessary arrangement. Request is made on behalf of the Appellants to grant time till end of December 2006. This request is opposed by the Counsel for the Respondents. Counsel for the Respondents points out that in fact, the Scheme submitted by the Appellants for re-development has been rejected. In that view of the matter, the Appellants being unauthorised occupants, cannot be allowed to occupy the premises any longer. Even so, now that the issue is finally concluded against the Appellants, by way of indulgence, Appellants are granted time to vacate till 6th November 2006.

5. It is made clear that no further indulgence will be granted to the Appellants on any count. On this arrangement, the Appellants through Counsel assure that the Suit instituted before the

Trial Court will not be pursued further and steps will be taken to withdraw the same. Even this assurance is accepted.

6. The Appellants are granted time to vacate the suit premises in their respective possession, not later than 6th November 2006, failing which, it will be open to the Respondents to proceed to take appropriate action including by removing any person in occupation thereof by using police force, if required, on or after 7th November 2006.

7. At this stage, Mr.Vashi submits that as he has not perused the order passed by the Authority dealing with the Scheme regarding re-development submitted before the Authority, in case, as per the Scheme, any of the Appellant is entitled for relief or benefit of the Scheme, said Appellant be entitled to pursue that course in accordance with law. If such occasion arises, that be considered at the appropriate stage.

8. Appeal and the cognate Civil Application disposed of on the above terms.

A.M.KHANWILKAR, J.